

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

# Issue Paper

Enc.

**DATE:**

May 14, 2026

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve the contract and conditions for Newsela/Formative for Ryland Heights Elementary and Dixie Heights High School for the 2026-2027 school year.

**APPLICABLE BOARD POLICY:**

01.1 - Legal Status of the Board

**HISTORY/BACKGROUND:**

Formative is a web based tool that allows teachers to create tasks or assignments that are easily accessible for students through a device. Formative gives students the opportunity to interact with the tasks in real time, allowing the teacher to quickly and efficiently formatively assess student attainment of skills and adjust instruction as needed.

**FISCAL/BUDGETARY IMPACT:**

\$18,540 (SBDM-7000, Title I)

**RECOMMENDATION:**


Approve the contract and conditions for Newsela/Formative for Ryland Heights Elementary and Dixie Heights High School for the 2026-2027 school year.

**CONTACT PERSON:**

Jena Smiddy

  
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.*



Newsela Inc.  
 169 Madison Ave., #2770  
 New York, NY 10016

# Order Form

**Billing Information:**

Billing Frequency: Upfront in full  
 Payment Terms: Net 30  
 Billing Schedule: Upon license start date

**Order Form No.** Q-182277  
**Newsela Contact:** Elizabeth Cooper-Mullin  
**Contact Email:** elizabeth.cooper-mullin@newsela.com  
**Offer Date:** May 18, 2026  
**Expiration Date:** August 31, 2026

**To:**  
 Jena Smiddy  
 Kenton County Schools  
  
 2044 Tuscanview Dr  
 Covington, KY 41017

**Products**

Sites	Product Code	Product Names
2	ATG207	Balanced Assessment by Formative

**Contract Total \$18,540.00**

**Products Breakdown**

Account	Product Code	Product Names	License Dates	Line Total
DIXIE HEIGHTS HIGH SCHOOL	ATG207	Balanced Assessment by Formative	09/01/26 - 08/31/27	\$14,340.00
RYLAND HEIGHTS ELEMENTARY SCHOOL	ATG207	Balanced Assessment by Formative	09/01/26 - 08/31/27	\$4,200.00

\*See table above or Appendix for Product/Services details and License Dates.

This Order Form, the Terms of Service attached, and the terms of any Statement of Work provided for the order of any Custom Collection, if applicable, which are hereby incorporated by this reference, is entered into by and between Newsela, Inc., and its parents, subsidiaries and affiliates, having an office at 169 Madison Ave., #2770, New York, NY 10016 (together "Newsela") and the customer named above, having an office at the address set forth above ("Customer"). All capitalized terms used in this Order Form and not defined herein shall have the meanings ascribed to them in the Terms of Service linked above. This Order Form is subject to the Terms of Service attached, Newsela's Privacy Policy and, where applicable, any additional Terms and Conditions, or other binding RFP or binding bid signed by and between the Parties (together the "Customer Agreement").

The Customer Agreement constitutes the entire agreement between the parties with regards to this subject matter, and supersedes all written or oral understandings, proposals, bids, offers, purchase or delivery orders, negotiations, agreements or communications of every kind. Additionally, the Customer Agreement specifically supersedes the terms and conditions of any Purchase Order delivered to Newsela after this Customer Agreement is executed and any such terms

and conditions shall not be applicable or considered a part of the terms and conditions that govern this engagement. The Customer's internal requirements for Purchase Orders does not relieve Customer of its obligation to pay Newsela for all years included herein. This Customer Agreement and the terms contained therein are intended only for the Customer and should be kept confidential. This Agreement may be terminated by either party for convenience with no less than thirty (30) days written notice to the other party.

**Term:** The subscription for the above-identified Newsela Products will commence and end as defined above, or in the License Dates Section of the Appendix in this Customer Agreement. By signing this Order Form, the Customer agrees to the pricing per product and quantity breakdowns underlying this Order Form, which will be provided by Newsela upon request at any time and will also be provided on the invoice unless requested otherwise. Failure of the Customer to make use of the Products during their respective License Dates specified herein will not extend Newsela's obligation to deliver those Products/Services beyond those dates.

Following the Subscription End Date, unless prohibited by law, this Customer Agreement will renew for the Products/Services licensed hereunder for successive periods equal in length to the greater of the Term or 12 months (a 'Renewal Term'). If this Customer Agreement is so renewed, Customer agrees the prices payable for such Renewal Term shall be the prevailing rates then offered by Newsela for the licensed products stated above.

**Fees:** The Customer agrees to pay the Contract Grand Total set forth above per the Billing Terms noted above upon execution of this Customer Agreement. If a Purchase Order is required, Customer shall submit the Purchase Order to Newsela in accordance with the Billing Information set forth hereinabove by emailing it to [billing@newsela.com](mailto:billing@newsela.com) and including "Customer Agreement No. Q-182277" in the subject line, otherwise a purchase order shall not be required for payment. Service will be suspended at Newsela's discretion if payment is not received by Newsela in accordance with the Billing Terms noted above. Failure of the Customer to use the Products/Services will not relieve Customer of its obligation to pay hereunder.

The individual executing this Customer Agreement has the authority to execute this agreement and bind the Customer, and Newsela has the right to rely on that authorization. The individual executing this Customer Agreement also certifies that there is funding in place for years included herein.

**1. Purchase Order Information**

If you need a Purchase Order, please fill out the following information.

**PO Required:**

**PO Number:**

**PO Amount:**

**2. Billing Information**

Provide the billing service representative to whom the invoice should be addressed.

**Bill-To Name:**

**Bill-To Email:**

By initialing here, I agree that the billing details stated above are current and accurate. \_\_\_\_\_

*Prices shown above do not include any state and local taxes that may apply. Any such taxes are the responsibility of the Customer and will appear on the final invoice (if applicable). If the contracting entity is exempt from sales tax, please send the required tax exemption documents along with the order form number (Q-182277) to [salestax@newsela.com](mailto:salestax@newsela.com).*

**3. Is your organization exempt from sales tax?**

Please enter **Yes** or **No**:

Authorized Signature:

Date of Signature:

Newsela Authorized Signature

*Bryan Caplin*

Date of Signature: 06 / 11 / 2026

# MASTER SERVICES AGREEMENT

*Last Updated: April 24, 2024*

**Please note:** This MSA was updated April 24, 2024. If you are an existing Newsela Customer, please contact your Newsela representative for the prior version.

THIS MASTER SERVICES AGREEMENT (collectively, with any Order Form(s) and the Data Processing Addendum, this "Agreement") is entered into and effective as of the Effective Date by and between Newsela, Inc. and its parents, subsidiaries, affiliates, and assigns (collectively, "Newsela") and the Customer identified on the applicable Order Form. Newsela and Customer may be referred to individually as a "Party" and collectively as the "Parties". For good and valuable consideration, the sufficiency and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

## 1. DEFINITIONS.

1.1 "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control" for purposes of this definition, means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

1.2 "Authorized Users" means the Customer's employees, personnel, students, and other individuals to whom the Customer provides or makes available the Products. To the extent this Agreement is entered into by a District on behalf of one or more Schools, "Authorized Users" shall also include the applicable School's employees, personnel, students, and other individuals to whom such School provides or makes available the Products.

1.3 "Confidential Information" means all confidential and proprietary information, materials, know how, data, trade secrets, business plans, processes, financial information, marketing plans, customer, supplier, or investor lists, research, and technical or commercial information, in tangible or intangible form, relating to a Party (the "Disclosing Party") and that is provided to the other Party (the "Receiving Party"). Newsela's Confidential Information shall include, but is not limited to, the Newsela Intellectual Property, as defined in Section 6.

1.4 "Content" means the informational material and learning content licensed for use by Newsela on the Newsela Platform and in the Products.

1.5 "Data Processing Addendum" or "DPA" means the document agreed to by both Parties that governs the processing of data, including but not limited to User Data, in connection with this Agreement.

1.6 "District" means a unit of administration of one or more Schools.

1.7 "Documentation" means any and all user guides or other documentation describing the features, functionality or operation of the Products supplied or made available by Newsela

on the Newsela Platform for use with or in support of the Products, including without limitation any and all revisions, modifications, and updates to such Documentation made by Newsela from time to time.

1.8 “Newsela Platform” means Newsela’s proprietary web-based learning and analytics platforms, including its websites and mobile applications, Newsela Lite, and any other platforms Newsela owns, controls, and/or on which its Products are delivered.

1.9 “Newsela Intellectual Property” means Newsela Platform, Products, Documentation, Newsela’s name, logos, services marks, and trade names used on or in connection with the Products, including all derivatives, updates and modifications thereof and thereto.

1.10 “Products” means the products and services licensed by Customer pursuant to an Order Form, including any professional development, support, implementation, and training services offered by Newsela as provided on the Newsela Platform.

1.11 “Order Form” means the document by which Customer purchases Products from Newsela. Each Order Form shall reference this Agreement and forms part of this Agreement.

1.12 “School” means a single educational institution.

1.13 “Students” means students who are Authorized Users enrolled in School classes on Newsela Platform.

1.14 “TOU” are the most current Terms of Use applicable to the Newsela Platform.

1.15 “Third Party Application” means a software application with functionality that interoperates with the Products, that is provided by Customer or a third party (other than the Products).

1.16 “User Data” means the data and information submitted or provided to the Products by Customer or its Authorized Users.

## **2. PRODUCT**

2.1 Newsela shall provide the Products that are set forth on an Order Form. To the extent Customer requests additional Products, Newsela shall have no obligation to provide additional Products not set forth on a current Order Form, unless and until the Parties execute an additional Order Form that includes such Products. In the event of any conflict between the terms of this Master Services Agreement and an Order Form, the Order Form shall control.

2.2 Access to certain features of the Products by an Authorized User will be determined by the type of license the Authorized User is using to access the Products.

2.3 An Authorized User's use of the Newsela Platform shall be subject to the terms and conditions of the then-current TOU. The TOU may be updated from time to time as set forth in the TOU. Customer understands and acknowledges that each Authorized User shall agree to the terms and conditions of the TOU prior to use of the Products.

2.3 Newsela may regularly, without notice, update the Products and reserves the right to add, remove, and/or substitute functionally equivalent features for any reason, including without limitation in the event of product unavailability, or changes to software requirements.

2.4 No Obligation to Monitor Content. Customer acknowledges that Newsela has no obligation to review, monitor or pre-screen Content on the Products, although Newsela reserves the right in its sole discretion to review, monitor, pre-screen, refuse, modify, or remove any Content (a) that violates any law or regulation; (b) that violates these Terms; (c) that otherwise creates or may create liability for Newsela; or (d) for any other reason Newsela determines in its sole discretion. Except as expressly set forth in these Terms, Newsela does not approve, endorse or make any representations or warranties with respect to User Content or Student Data.

2.5 Newsela does not warrant or support Third Party Applications unless expressly provided otherwise in an Order Form. The Products may contain features designed to interoperate with Third Party Applications. Newsela cannot guarantee the continued availability of such Product features, and may cease providing them without entitling Customer to any refund or credit, if for example and without limitation, the provider of the Third Party Application ceases to make the Third Party Application available for interoperation with the Products in a manner acceptable to Newsela. Customer is responsible for complying with the applicable terms of service for any Third Party Applications with which Customer uses the Products.

### **3. LICENSE AND USE RESTRICTIONS**

3.1 Subject to the terms and conditions of this Agreement, during the Term, Newsela grants Customer a limited, personal, non-exclusive, non-transferable, non-sublicensable, and non-assignable license to: (a) access and use the Products solely for Customer's educational and internal business purposes; and (b) permit Authorized Users to access and use the Products solely for Customer's educational and internal business purposes.

3.2 Customer shall (a) be responsible for Authorized Users' use of the Products and compliance with this Agreement and the TOU, (b) be responsible and liable for all User Data submitted through a Customer or Authorized User account, including without limitation, the accuracy, content, quality and legality of User Data provided or made available to Newsela in connection with this Agreement and the means by which Customer acquired User Data, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Products, and notify Newsela promptly of any such unauthorized access or use, (d) use the Products only in accordance with the Documentation and applicable laws, rules and government regulations, and (e) be solely responsible for the

Customer systems through which the Products are accessed. The Products do not replace the need for Customer to maintain regular back-up procedures and business continuity policies with respect to User Data.

3.3 Customer represents and warrants that (a) Customer has obtained all necessary rights, consents, permissions, and approvals in connection with all data provided or made available to Newsela in connection with the Products and/or this Agreement, including without limitation obtaining all consents and providing all notices required under applicable data privacy and information security laws, (b) such data does not infringe or otherwise violate the rights of any third party, and (c) any personally identifiable information of persons under the age of eighteen (18) collected or processed by Customer has been and shall be collected and processed only in strict compliance with applicable laws, including all applicable data privacy and information security laws. Customer further represents and warrants that it shall, at all times during the Term of this Agreement, adhere to all applicable privacy and data protection laws.

3.4 Without limiting Newsela's other rights or remedies, Newsela may suspend access to the Products in the event of a threat to the security or technical integrity of the Products and will provide written notice to Customer of such suspension to Customer.

3.5 Customer shall not: (a) make the Products or the Documentation available to, or use any Products or the Documentation for the benefit of, anyone other than Customer or its Authorized Users (and, with respect to Authorized Users, only in conjunction with their performance of services under Customer's control and involving the review of information pertaining to their performance of such services); (b) sell, resell, sublicense, distribute, rent or lease any Products or any portion thereof, including the Documentation or include any Products in a service bureau, time sharing or outsourcing offering; (c) interfere with or disrupt the integrity or performance of the Products or third-party data contained therein; (d) attempt to gain unauthorized access to the Products or its related systems or networks; (e) copy the Products or any part, feature, function or user interface thereof; (f) access the Products in order to build a competitive product or service; (g) reverse engineer the Products, in whole or in part, nor use any methods to gain access to the source code or infrastructure of the Products, in whole or in part; (h) access or use the Products in order to benchmark the Products, or any portion thereof, or Newsela's performance of the Products, or (i) use framing techniques to enclose any trademark or logo on the Newsela Platform. Customer shall use commercially reasonable measures to ensure Customer's use of the Products do not store or transmit code, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses. Customer shall not provide any competitor of Newsela (including any employee or contractor of such competitor) with access to or use of the Products, including by read-only access, direct access through an Authorized User identification and password information, or otherwise.

3.6 The rights granted to Customer and its Authorized Users in this Agreement are subject to the following restrictions: (a) Customer shall not license, sell, rent, lease, transfer, assign, reproduce, distribute, host or otherwise commercially exploit or make available for commercial exploitation the Content; (b) Customer shall not modify, translate, adapt,

merge, make derivative works of, disassemble, decompile, reverse compile or reverse engineer any Content unless for personal, educational use; (c) Customer shall not use any manual or automated software, devices, or other processes (including but not limited to spiders, robots, scrapers, crawlers, avatars, data mining tools, or the like) to “scrape” or download data from any web pages contained in the Content; and (d) Customer shall not remove or destroy any copyright notices or other proprietary markings contained on or in the Content, Newsela Platform, Product, or Documentation.

## **4. DATA AND DATA PRIVACY**

4.1 Customer grants Newsela a non-exclusive, royalty-free, worldwide license to use, transmit, distribute, modify, reproduce, display, access, and store User Data for the purposes of (a) providing the Products contracted for in the Order Form; (b) monitoring and improving the performance of the Products and other internal business purposes; and (c) creating de-identified, aggregated, and/or anonymized versions of User Data for Newsela’s internal and/or external use. Customer represents and warrants that it owns or has the legal right and authority, and will continue to own or maintain the legal right and authority, to grant to Newsela the license set forth in this paragraph.

4.2 Newsela shall have the right to collect technical and usage data from Customer’s and its Authorized Users’ use of the Newsela Platform and Products (“Technical Data”). Newsela shall own all Technical Data, and all de-identified or aggregated versions of User Data created by Newsela. Newsela may use such Technical Data and de-identified or aggregated User Data to improve, provide and update the Newsela Platform and Products; provided, that such data cannot reasonably be used to identify Customer or an Authorized User.

4.3 Newsela shall process User Data in accordance with the Privacy Policy posted on the Newsela Platform and in compliance with all applicable privacy laws including but not limited to the Family Educational Rights and Privacy Act (“FERPA”) or Children’s Online Privacy Protection Act (“COPPA”). The Parties shall enter into a Data Processing Addendum (“DPA”) to govern the processing of data in connection with this Agreement. Newsela will process User Data in compliance with the DPA found [here](#) unless a separate data agreement has been mutually agreed to by both Parties.

## **5. FEES AND PAYMENT**

5.1 The Parties shall pay the fees set forth in and in accordance with each Order Form. Products are considered delivered and accepted when access to the Newsela Platform is turned on for the Customer. For any subscription-based Product, the quantity of licenses sold shall represent Newsela’s obligation to provide access for up to that quantity of licenses, as applicable. Except as otherwise set forth in the applicable Order Form, payment of all fees is due by Customer within thirty (30) days after Customer’s receipt of invoice. Customer shall be responsible for payment of all taxes (excluding those on Newsela’s net income) relating to the provision of the Products, unless prohibited by applicable law.

5.2 If any amount owed to Newsela under this Agreement is overdue, Newsela may, without limiting its other rights and remedies, (a) charge interest on the past due balances at the rate of one and a half percent (1.5%) per month as long as it does not exceed the amount allowable by law, and/or (b) suspend the Products to Customer until such amounts are paid in full.

5.3 Newsela may change the pricing for the Products (from time to time in its sole discretion) by updating the Newsela Platform, as applicable, and without any additional notice to Customer, provided that any changes will not take effect until the Customer's subscription renews or Customer adds new/additional features or Products to Customer's existing Agreement.

5.4 Except as otherwise stated herein, all payments are non-refundable. Fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Customer are responsible for payment of all such taxes, levies or duties when applicable. If any fee cannot be charged to the Customer payment method for any reason, Newsela may provide Customer, via email, notice of such non-payment and a link for Customer to update Customer's payment information. If such non-payment is not remedied within seven (7) days after receiving such notice of non-payment, then Newsela may suspend the applicable Products.

## **6. OWNERSHIP AND CONFIDENTIAL INFORMATION**

6.1 Customer agrees that Newsela and its third-party licensors, as applicable, own all rights, title and interests in and to the Newsela Platform, Products, Documentation, Newsela's name, logos, services marks, and trade names used on or in connection with the Products, including all derivatives, updates and modifications thereof and thereto (collectively, the "Newsela Intellectual Property"). Customer agrees that Newsela Intellectual Property may not be used without Newsela's written permission from an authorized representative. Other than the limited license and use rights expressly set forth in this Agreement to the Newsela Intellectual Property, Newsela does not grant Customer any rights to the Newsela Intellectual Property and reserves all rights therein.

6.2 If Customer proposes or provides any ideas, suggestions, recommendations, enhancements, improvements, or other feedback ("Improvements") to Newsela, then Customer hereby assigns all rights, title, and interests, including all copyright, patent and trade dress rights, in and to such Improvements to Newsela.

6.3 The Receiving Party shall use commercially reasonable efforts to avoid the loss, unauthorized disclosure and/or unauthorized use of any Confidential Information of the Disclosing Party. The Receiving Party agrees to protect the confidentiality of the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind (but in no event using less than reasonable care). If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and

reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

6.4 Confidential Information shall not include information that: (1) is in the public domain at the time of disclosure to the Receiving Party; (2) becomes part of the public domain after disclosure by the Disclosing Party without obligation of confidentiality and without direct or indirect fault of the Receiving Party or person(s) acting on the Receiving Party's behalf; (3) was in the Receiving Party's possession before receipt from the Disclosing Party without an obligation of confidentiality; (4) is lawfully obtained from a third party who has the right to make such disclosure on a non-confidential basis; or (5) has been independently developed by the Receiving Party without reference to or use of the Confidential Information of the Disclosing Party.

6.5 The Parties agree that any breach of this Section, including improper use or disclosure of the Confidential Information by the Receiving Party, would cause irreparable harm to the Disclosing Party, for which remedies at law would be inadequate, and the Disclosing Party shall be entitled to seek injunctive relief against any such breach or threatened breach, without posting any bond or showing of irreparable harm, in addition to any other remedy available to it.

## **7. TERMINATION**

7.1 This Agreement shall continue for the Term set forth on the applicable Order Form, until: (i) this Agreement is terminated as provided herein, or (ii) the expiration or termination of all Order Forms.

7.2 Either Party may terminate this Agreement for cause: (i) upon written notice to the other Party in the event of a material breach of this Agreement by the other Party which remains uncured thirty (30) days after receipt of written notice thereof; or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors and such petition or other proceeding is not dismissed within ninety (90) days of the filing thereof. Without limiting the foregoing, and in addition to any of its other termination rights set forth herein, Newsela may terminate this Agreement in whole or in part, effective on written notice to Customer, if Customer: (a) fails to pay any amount when due hereunder, and such failure continues more than thirty (30) days after Newsela's delivery of written notice thereof; or (b) breaches any of its obligations under Sections 3.5 and 3.6 or Section 6.

7.3 If Customer has materially breached any provision of the Agreement, or if Newsela is required to do so by law (e.g., where the provision of the Newsela Platform is, or becomes, unlawful), Newsela has the right, at its sole discretion, to immediately suspend any services and licenses provided to Customer under this Agreement ("Suspension"). Following Suspension, Newsela and Customer will work together in good faith to determine whether to reinstate the suspended access to (and any associated licenses to) the Newsela Platform or permanently terminate the Agreement.

7.4 Upon any termination or expiration of this Agreement: (i) all rights and licenses granted to Customer and Authorized Users shall cease, and Customer and its Authorized Users shall immediately discontinue use of the Products; (ii) each Party shall immediately discontinue use of the other Party's Confidential Information and return to the other Party or, at the other Party's option, destroy, all copies of such Party's Confidential Information; provided, however, Newsela shall be permitted to retain copies of Customer's Confidential Information solely for archival, audit, disaster recovery, and/or regulatory purposes in accordance with applicable law; and (iii) Customer shall promptly pay all amounts due to Newsela under the Agreement. Termination of the Agreement includes removal of access to the Newsela Platform and bars further use of the Newsela Platform. Termination of this Agreement also may include deletion of Customer's User Data. Upon termination of any service, Customer's right to use such services will automatically terminate immediately. Newsela will not have any liability whatsoever to Customer for any Suspension or termination, including for deletion of Customer's User Data. The rights and obligations of the Parties set forth in Sections 4, 5, 6, 7.4, 8, 9, and 12 of this Agreement shall survive the termination of this Agreement.

## **8. INDEMNIFICATION**

8.1 Newsela shall indemnify and defend Customer from any third-party claim alleging that the use of the Products by Customer as contemplated by this Agreement infringes a third party's U.S. patent issued as of the Effective Date, or any copyright, trademark, or trade secret rights of a third party. Newsela shall pay any damages awarded in any final judgment entered by a court of competent jurisdiction with respect to any such claim or agreed to by Newsela in any settlements arising out of such claim; provided, that (i) Customer promptly gives written notice of the claim to Newsela; (ii) Customer gives Newsela sole control of the defense and settlement of the claim (provided, that Newsela shall not settle any claim unless it unconditionally releases Customer of all liability); (iii) Customer provides to Newsela, at Newsela's cost, all reasonable assistance; and (iv) the alleged infringement does not arise as a result of: (a) the combination, operation, or use of the Products with third party software, services, or other products or materials not furnished or authorized by Newsela, (b) failure by Customer to timely implement any updates made available to Customer by or on behalf of Newsela, or (c) Customer's or an Authorized User's violation of any laws, rules, and/or regulations applicable to its business. In the event of such a claim or threat thereof, Newsela may, in its sole discretion, (1) obtain a license for the infringing part of the Products, (2) remove or alter the infringing part of the Products, so long as such removal or alteration does not materially affect the functionality of the Products, or (3) terminate this Agreement and Customer's license to the applicable Products. THIS SECTION STATES THE ENTIRE OBLIGATION AND LIABILITY OF NEWSELA, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS.

8.2 Unless you are a government entity and applicable law requires otherwise, Customer shall indemnify, defend and hold harmless Newsela, and their respective owners, managers, directors, employees, and contractors from and against all losses, damages, liabilities and costs (including reasonable attorneys' fees) incurred in connection with any

third party claim arising out of or relating to (i) the User Data, (ii) Customer's use of the Products or the results obtained therefrom, (iii) any of the exclusions set forth in Section 8.1(a)-(c) above, and/or (iv) Customer's breaches of Section 3.

## **9. LIMITATION OF LIABILITIES**

9.1 IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY ARISING OUT OF THIS AGREEMENT OR THE PRODUCTS, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF DATA, LOSS OF REVENUE OR LOSS OF USE, WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9.2 IN NO EVENT SHALL NEWSELA'S MAXIMUM, AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED AN AMOUNT EQUAL TO THE FEES RECEIVED BY NEWSELA FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE FIRST CLAIM BROUGHT UNDER THIS AGREEMENT.

9.3 NOTWITHSTANDING THE FOREGOING, THE ABOVE LIMITATIONS SHALL NOT APPLY TO CLAIMS ARISING FROM A PARTY'S INDEMNIFICATION OBLIGATIONS OR CUSTOMER'S BREACHES OF SECTION 3 OF THIS AGREEMENT, WHICH INDEMNIFICATION OBLIGATIONS AND CUSTOMER BREACHES OF SECTION 3 ARE ALL CAPPED IN THE AGGREGATE AT THREE (3) TIMES THE FEES AMOUNT RECEIVED BY NEWSELA FROM CUSTOMER IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO THE FIRST CLAIM BROUGHT UNDER THIS AGREEMENT.

## **10. DISCLAIMER OF WARRANTIES**

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, THE PRODUCTS ARE PROVIDED BY NEWSELA "AS IS," AND "WITH ALL FAULTS". NEWSELA EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, THE PRODUCTS AND/OR THE RESULTS THAT MAY (OR MAY NOT) BE ACHIEVED BY AN AUTHORIZED USER OR CUSTOMER'S USE OF THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE. NEWSELA DOES NOT WARRANT THAT THE OPERATION OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE AND WHILE NEWSELA HAS USED REASONABLE MEASURES TO MAINTAIN THE CONFIDENTIALITY OF USERS' INFORMATION, CUSTOMER ACKNOWLEDGES AND AGREES THAT NEWSELA CANNOT GUARANTEE THE SECURITY OR ACCESSIBILITY OF SUCH INFORMATION. CUSTOMER ACKNOWLEDGES THAT NEWSELA USES A THIRD PARTY TO HOST THE PRODUCTS AND TO STORE USERS' INFORMATION AND NEWSELA MAKES NO REPRESENTATION OR WARRANTY AND SHALL HAVE NO LIABILITY FOR SUCH THIRD PARTY SERVICES. NEWSELA MAKES NO WARRANTIES REGARDING THE ACCURACY OR COMPLETENESS OF ANY INFORMATION PROVIDED IN CONNECTION WITH OR RESULTS OBTAINED THROUGH USE OF THE PRODUCTS, AND

NEWSELA SHALL HAVE NO LIABILITY FOR ANY CLAIM ARISING FROM ANY USE OF SUCH INFORMATION OR RESULTS.

## **11. NOTICES**

Any notice, approval, or other communication under this Agreement must be given in writing and is be deemed to have been delivered (i) on the delivery date if delivered personally to the Party to whom the same is directed; (ii) on the delivery date if delivered by email address to the email address provided below, for Newsela, and in the Order Form, for the Customer; or (iii) upon receipt as evidenced by a return receipt, after deposit with a commercial overnight carrier, or by U.S. mail, return receipt requested, postage and charges prepaid, to the following addresses, or to such other address as changed by a Party providing written notice in accordance with this Section:

If to Newsela:

169 Madison Avenue, STE 2770  
New York, New York 10016  
commerciallegal@newsela.com

If to Customer:

To the Customer's postal and email address as set forth on the Order Form.

## **12. GENERAL PROVISIONS**

**12.1 No Waiver. Entire Agreement. Modification of Agreement.** No failure or delay by either Party in exercising any right under this Agreement shall constitute a waiver of that right. This Agreement, including the TOU, constitutes the entire agreement with respect to the transactions set forth herein and supersede any and all prior agreements, written or oral, of the Parties with respect to the transactions set forth herein. Unless specifically agreed to otherwise in writing and signed by both parties, this Agreement and the TOU may be supplemented, amended, or modified by Newsela.

**12.2 Dispute Resolution.** The Parties shall attempt to resolve any disputes that may arise between the Parties under this Agreement. If the Parties are unable to resolve the dispute within fifteen (15) business days, then the dispute shall be escalated to an executive-level officer for each Party for review and resolution. If the dispute is not resolved by the Parties' officers within fifteen (15) business days from escalation to the officers, either Party shall have the right to pursue any remedies permitted under this Agreement or at law or in equity. The Parties agree to continue performing their respective obligations under this Agreement while the dispute is being resolved unless and until such obligations are terminated in accordance with the provisions of this Agreement. All attempts to resolve any dispute shall be conducted in good faith by the Parties.

**12.3 Governing Law.** This Agreement and all claims relating to this Agreement shall be interpreted, construed, enforced, and litigated in accordance with the laws of the State of Kentucky and in the courts of the State of Kentucky without giving effect to its conflicts of laws rules, unless the State within which Customer is incorporated requires that the laws of that jurisdiction apply and Customer provides notice of the same. THE PARTIES HEREBY

EXPRESSLY WAIVE ANY AND ALL RIGHT TO A TRIAL BY JURY WITH RESPECT TO ANY EQUITABLE RELIEF BEING SOUGHT.

**12.4 Assignment.** Neither Party is permitted to assign or transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other Party; provided, that either Party may assign this Agreement in its entirety in connection with a merger, consolidation, change of control, acquisition, or sale of all or substantially all of the assets of such Party. Any assignment or transfer of this Agreement in violation of this Section is null and void. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective permitted successors and assigns.

**12.5 Severability.** If a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, that provision of this Agreement will be amended to achieve as nearly as possible the intent of the Parties, and the remainder of this Agreement will remain in full force and effect.

**12.6 Publicity.** Except as expressly permitted herein, neither Party shall, without the other Party's prior written consent in each instance, use or distribute in advertising, publicity or other promotional endeavor, the name of the other Party or such other Party's trademarks, or issue a press release concerning the relationship of the Parties. Notwithstanding the foregoing, Customer agrees that Newsela may identify Customer as a recipient of the Products and use Customer's trademarks, service marks, or logos in sales presentations and marketing materials in order to reference Customer as a customer of Newsela.

**12.7 Force Majeure.** Neither Party shall be responsible for any failure of its obligations under this Agreement to the extent that such failure is due to causes beyond such Party's reasonable control, including without limitation acts of God, war, terrorism or threat thereof, acts of any government or agency thereof, fire, flood, earthquake, explosions, epidemics, quarantine restrictions, strikes or labor disputes, lockouts, embargoes, civil unrest, severe weather conditions, delay in transportation, computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, software or power systems not within Newsela's possession or reasonable control, denial of service attacks, or acts or omissions of vendors or suppliers (each, a "Force Majeure Event"); provided, however, that Customer's obligation to timely make payment of all fees for the Products may be temporarily delayed during the event, but shall not be excused or further delayed by this clause. In the event a Force Majeure Event extends for a period greater than thirty (30) days, Newsela may terminate this Agreement upon notice to Customer. Newsela shall not be in breach of its obligations under this Agreement during a Force Majeure Event if Newsela offers a reasonable accommodation or substitute for the disrupted services, which Newsela may offer in its sole discretion. For the avoidance of doubt, COVID-19 and its foreseeable consequences and effects shall not constitute a Force Majeure Event.

**12.8 Independent Contractor.** The Parties to this Agreement are independent contractors, and under no circumstances shall this Agreement be interpreted to create an agency, joint venture or partnership between the Parties. Neither Party is an agent,

representative, or partner of the other Party. Neither Party shall have any right or authority to incur any obligation or liability of, or to otherwise bind, the other Party.

**12.9 No Third-Party Beneficiaries.** There are no third party beneficiaries to this Agreement.

**12.10 Electronic Signature and Counterparts.** If either Party signs this Agreement through electronic signature, such electronic signature will have the same effect as a physical signature. This Agreement may be executed in any number of electronic, PDF or facsimile counterparts, each of which is deemed an original and all of which together constitute one and the same agreement.

**12.11 Construction.** The Parties have had an opportunity to confer with counsel in the negotiation of this Agreement. Accordingly, the normal rules of construction, by which an ambiguity would be construed against the drafting Party, will not apply to the interpretation or enforcement of this Agreement.



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

THE KENTON COUNTY BOARD OF EDUCATION  
1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017  
TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531  
WEBSITE: [www.kenton.kyschools.us](http://www.kenton.kyschools.us)  
Dr. Henry Webb, Superintendent of Schools

**VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL  
AND CONFIDENTIAL INFORMATION Data Security and Breach  
Protocols**

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

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

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

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

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

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

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

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

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

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

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

### **Student Data Security**

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

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.

Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.

- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

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

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

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

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

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

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal 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.

Newsela, Inc. Vendor  
Name

169 Madison Ave., #2770, New York, NY 10016 Vendor  
Address

646-450-0005 Vendor  
Telephone

privacy@newsela.com Vendor  
Email Address

*Bryan Caplin* Signature  
by Vendor's Authorized Representative

Bryan Caplin Print  
Name

05 / 18 / 2026 Date