



1601 Dana Avenue
Cincinnati, OH 45207 USA
<http://www.cerkl.com>

SUBSCRIPTION DETAILS

Subscription Term:	3 Years	Billing Rate:	\$9,000 - Year 1 Boone County - \$3,000 Boone County Schools \$3,000 Boone County Library \$3,000
	Bronze Level Package unlimited newsletters 3 admins 5 content sources		\$9,000 - Year 2 (same breakdown above) \$9,000 - Year 3 (same breakdown above)
Billing Term:	Annual	Payment Terms:	Net 30
Auto-Renewal:	Yes	Billing Frequency:	Annual

CUSTOMER INFORMATION

Company/Licensee: Boone County
Primary Contact: Chris Courtney
Address: 2950 Washington St.
Burlington, KY 41005

Email: ccourtney@boonecountyky.org
Phone: 859.334.3125

BILLING CONTACT INFORMATION

Customer PO: Boone County
Billing Contact: Chris Courtney
Billing Address: 2950 Washington St.
Burlington, KY 41005

Email: ccourtney@boonecountyky.org
Phone: 859.334.3125
Tax Exempt: Yes

TERMS AND CONDITIONS

Customer agrees to contract for use of the software, subject to the terms of this Agreement. In consideration of the mutual rights and obligations in this Agreement, the parties agree as follows:

- 1. TERM OF AGREEMENT.** This Agreement shall only extend for 36 months (the "Subscription Term") from the Effective Date of this Agreement (as dated below). Either party may terminate this Agreement if the other party commits a material breach of the Agreement and the breach is not cured within thirty (30) days of that party receiving written notice of such breach. Termination does not affect Customer's obligation to pay for Services already provided by Cerkl.
- 2. FEE GUARANTEE.** The Billing Rate is guaranteed for the length of the Subscription Term of this Agreement, regardless of the size of the Customer's audience. Renewal terms will be repriced based on current audience size - with a price per audience member rate not to exceed 3% of the prior Billing Rate.
- 3. GENERAL PROVISIONS.**
 - a. Confidential Information.** "Confidential Information" means any proprietary or confidential information as such terms are most broadly defined under common or other applicable law, including Customer's audience information (names, email addresses, preferences, etc.), Cerkl's software, and the terms of this Agreement. Each party agrees that it (i) will not copy or use any of the other party's Confidential Information in any way, except as permitted by this Agreement or as required to achieve the purposes of this Agreement, (ii) will not disclose any of the other party's Confidential Information to any third party, except as required by law or to that party's attorneys and accountants as reasonably necessary, and (iii) will protect the other party's Confidential Information reasonably and at least as well as it protects its



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own. Information is not Confidential Information if a party can clearly show that it (i) became known to the receiving party prior to receipt from the disclosing party, (ii) has become publicly known, except through breach of this Agreement, or (iii) is independently developed without reference to Confidential Information.

- b. **Intellectual Property.** Except as otherwise provided herein, Cerkl has all right, title, and interest to all types of intellectual property, including but not limited to new forms and form modifications, software, trademarks, and other inventions or technical know-how protectable under patent, copyright, and/or trade secret law ("Intellectual Property"), conceived, discovered, and/or developed, in whole or in part, by Cerkl in the performance of this Agreement; provided, however, that any reports, newsletters, messages, presentations or other copy directed at Customer's audiences and created pursuant to this Agreement shall be owned by and shall be the exclusive property of the Customer for its use and shall be considered a "WORK MADE FOR HIRE" as that term is defined for copyright and other purposes, and as such, the Customer retains and reserves all rights thereto.
- c. **Limited License.** Subject to the terms of this Agreement, Cerkl grants Customer a limited, non-exclusive, non-transferable license to use Cerkl's relevant Intellectual Property during the term of this Agreement solely for Customer's own internal purposes. Customer shall not sell, market, rent, or re-license any aspect of the Intellectual Property. Customer obtains no ownership rights or any other rights in the Intellectual Property, other than those specified herein. Customer grants Cerkl a license to use Customer's non-confidential information (e.g., statistical information) on a consolidated basis as part of Cerkl's overall statistics for marketing and/or analytical purposes.
- d. **Transferability.** Neither party may transfer, assign, or otherwise dispose of this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other party, except that Cerkl may assign this Agreement to any successor to all or substantially all of its assets or business, whether by merger, sale of assets, sale of stock, reorganization or otherwise.
- e. **Independent Contractor.** The relationship of Cerkl and Customer established by this Agreement is that of independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other, (ii) establish Cerkl as a communication or marketing consultant to Customer, (iii) establish the parties as partners, franchisee-franchiser, co-owners or otherwise as participants in a joint or common undertaking, or (iv) otherwise give rise to any fiduciary obligations between the parties.
- f. **Force Majeure.** Except for payment of fees, non-performance by either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.
- g. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements or representations, oral or written. Except as otherwise provided herein, this Agreement may not be modified except in writing signed by an authorized representative of each party. Both parties acknowledge having read the terms and conditions set forth in this Agreement and all attachments hereto, understand all terms and conditions, and agree to be bound thereby. The titles of sections and subsections are for convenience only and are not to be used in construing any term herein.
- h. **Governing Law; Jurisdiction.** Any dispute in the meaning, effect, or validity of this Agreement will be resolved in accordance only with the laws of the State of Ohio. Customer agrees that exclusive venue for litigation involving the enforcement of this Agreement or any rights, duties or obligations under this Agreement, whether brought by Customer or Cerkl, shall be in Ohio state court in Hamilton County, Ohio, or in a United States District Court located in Hamilton County, Ohio.
- i. **Counterparts and Facsimile Signature.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement may be executed by facsimile signature or by PDF signature.



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- j. Partial Invalidity/Severability. In case any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed, so far as is reasonable and possible, as if such invalid, illegal, or unenforceable provision or provisions had never been contained herein or in a manner that is reasonable and reflects the intent of the parties hereto.

4. WARRANTIES, RESPONSIBILITIES, AND LIMITATIONS.

- a. Limited Warranty. Cerkl warrants that Cerkl will use commercially reasonable efforts to fulfill its obligations under this Agreement. Cerkl does not warrant that its Services are or will be error free. Cerkl further does not warrant that its electronic files are not susceptible to intrusion, attack or computer virus infection, but given the confidential nature of much of this data, Cerkl will use commercially reasonable efforts to insure and safeguard the security of this data. EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN THIS SECTION AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, CERKL MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, GOOD TITLE, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
- b. Exclusive Remedies. For any breach of the warranties set forth above, Cerkl's entire liability and Customer's exclusive remedy shall be correction of the errors that cause the breach, or if Cerkl is unable to provide Services as warranted, Customer shall be entitled to credit for the fees for the non-performing Services for the period of non-performance.
- c. No Liability for Customer Procedures. Cerkl carries out procedures specified solely by Customer, and Cerkl expressly denies all liability for Cerkl's implementation of Customer's procedures including, but not limited to, Customer's communication policies. Customer is solely responsible for determining the scope and extent of the Services provided by Cerkl, and Customer is entirely responsible for reviewing the Services provided by Cerkl on Customer's behalf to ensure compliance with Customer's procedures. Cerkl makes no attempt to determine or advise as to whether Customer's procedures comply with any statutory or regulatory requirements, including but not limited to any statutory or regulatory requirements related to email communication, or any federal, state or local statutes governing the use of email communication. To the extent, however, that Customer's procedures or criteria clearly violate any of these laws, Cerkl reserves the right to refuse to implement such procedures or requirements.
- d. Cerkl's Limited Liability. Customer agrees that regardless of the form of any claim Customer may have under this Agreement or otherwise, Cerkl's liability for damages to Customer will not exceed the fees paid by Customer under this Agreement for the twelve (12) months immediately preceding the date on which the claim arose. Cerkl will not be liable for damages arising from any breach, unauthorized access, misuse of, or intrusion into Customer's data residing on Cerkl's computer servers unless such breach, unauthorized access, misuse or intrusion was caused by Cerkl's negligence, misconduct or omission. NEITHER PARTY WILL BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS RESULTING FROM THE USE OF THE SERVICES, OR ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR THE LIMITED WARRANTY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.



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THIS ORDER FORM BECOMES EFFECTIVE WHEN SIGNED BY THE PARTIES ("EFFECTIVE DATE"). BY SIGNING THIS ORDER FORM, THE PARTIES HEREBY ACCEPT THE TERMS AND CONDITIONS OF THIS ORDER FORM.

**Super Awesome Media, LLC.
dba Cerkl**

Boone County

Signature:

Signature:

Name (printed):

Name (printed):

Tarek Kamil

Title:

Title:

CEO/Founder

Date Signed:

Date Signed: