



## Issue Paper

**DATE:**

June 2, 2022

**AGENDA ITEM (ACTION ITEM):**

Consider/Approve the contract with Generation Genius and Piner Elementary to purchase access to K-5 Science and Math Curriculum Materials.

**APPLICABLE BOARD POLICY:**

01.11 General Powers and Duties of the Board

**HISTORY/BACKGROUND:**

Generation Genius is a K-8 teaching resource that brings school science and math standards to life through fun and educational videos paired with lesson plans, activities, quizzes, reading material and more. The videos and materials are produced in partnership with the National Science Teaching Association, and aligned to standards in all 50 states.

**FISCAL/BUDGETARY IMPACT:**

\$1,795 (Piner Elementary ESSR Budget)

**RECOMMENDATION:**

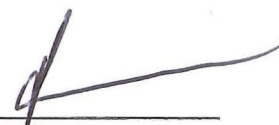
Approve the contract with Generation Genius and Piner Elementary to purchase access to the online K-5 Science curriculum.

**CONTACT PERSON:**

Tiffany Burris

  
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.

## Generation Genius, Inc.

14622 Ventura Blvd #2026,  
Sherman Oaks, CA 91403  
contact@generationgenius.com  
Phone: (866) 936-5564  
EIN: 82-2184201

**QUOTE: 150364A**

Date: 08/24/2022

**TO:**

Emily Thompson  
Piner Elementary  
2845 Piner Ridge Rd  
Morning View, KY 41063

**FOR:**

Generation Genius Videos & Lessons  
School (Science & Math) Plan License

DESCRIPTION	YEARS	RATE	AMOUNT
<b>1 School (Science &amp; Math) License</b> for educational streaming video subscription to Generation Genius. Includes videos, lesson plans, teacher guides, discussion questions, vocabulary, quizzes, and English / Spanish subtitles.	1	\$1,795.00	\$1,795.00
Total			<b>\$1,795.00</b>

This quote expires October 31, 2022. To subscribe to our service please submit a PO via email (Order@GenerationGenius.com), Fax (707-312-8176), or mail to the address above. Thank you.

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 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.

Generation Genius, Inc.

Vendor Name

14622 Ventura Blvd. #2026, Sherman Oaks, CA 91403

Vendor Address

866-936-5564

Vendor Telephone

support@generationgenius.com

Vendor Email Address

DocuSigned by:  
*Andrea Bogardus*  
98541490C7E2479...

Signature by Vendor's Authorized Representative

Andrea Bogardus

Print Name

6/23/2022

Date

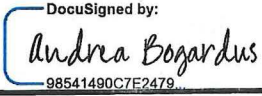
**ADDENDUM TO GENERATION GENIUS TERMS OF SERVICE  
FOR PINER ELEMENTARY**

**IN CONSIDERATION** of the mutual agreement by Generation Genius, Inc. (GG) and Piner Elementary agree to the following changes to GG's Terms of Service (TOS), as follows:

1. **Section 5 (Payment)** is hereby amended to include "There are no late fees"
2. **Section 16 (Governing Law)** is hereby amended by replacing Delaware with Kentucky.
3. All remaining Terms of Service remain in full force and effect. Capitalized terms used but not defined in this Addendum shall have the same meaning as ascribed to them in the TOS.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be executed by their authorized representatives, effective as of the date first set forth below.

**Generation Genius, Inc.**

By   
98541490C7E2479  
Its: Head of Support & Billing  
Date: 07.27.22

**Piner Elementary**

By \_\_\_\_\_  
Its: \_\_\_\_\_  
Date: \_\_\_\_\_

# Generation Genius Terms of Service

Welcome, and thank you for your interest in Generation Genius, Inc. ("Generation Genius", "we," or "us") and our website at [www.GenerationGenius.com](http://www.GenerationGenius.com) (the "Site," our "Service"). These Terms and Conditions are a legally binding contract between you and Generation Genius regarding your use of the Service.

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. BY CLICKING "CREATE ACCOUNT" DURING THE SIGNUP PROCESS, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THE FOLLOWING TERMS AND CONDITIONS, INCLUDING THE GENERATION GENIUS PRIVACY POLICY (COLLECTIVELY, THESE "TERMS"). If you are not eligible, or do not agree to these Terms, then please do not use the Service.

These Terms and Conditions provide that all disputes between you and Generation Genius will be resolved by BINDING ARBITRATION. YOU AGREE TO GIVE UP YOUR RIGHT TO GO TO COURT to assert or defend your rights under this contract (except for matters that may be taken to small claims court). Your rights will be determined by a NEUTRAL ARBITRATOR and NOT a judge or jury and your claims cannot be brought as a class action. Please review the Arbitration Agreement below for the details regarding your agreement to arbitrate any disputes with Generation Genius.

1. **Generation Genius Service Overview.** Generation Genius produces and distributes innovative, entertaining and educational videos & lessons through its streaming service to homes, schools and other institutions.
2. **Free Trial Policies.** Free trials are limited to 1 per person, per year. Additionally, the primary account holder of a free trial account must be age 13 or older. Students must use an account created by an adult to ensure that no personal identifying information is collected (like an email address in the sign-up form). As per our Privacy Policy, if we discover any student data in our systems, we are obligated to delete the data [within 24 hours of discovery.
3. **Eligibility.** By agreeing to these Terms, you represent and warrant to us: (i) that you have not previously been suspended or removed from the Service; (ii) that your registration and your use of the Service is in compliance with any and all applicable laws and regulations; and (iii) that all registration information you submit is accurate and truthful, including the information that you use to register for the Service. If you are using the Service on behalf of an entity, organization, or company, you represent and warrant that you have the authority to bind such organization to these Terms and you agree to be bound by these Terms on behalf of such organization.
4. **User Accounts and Registration.** To access most features of the Service, you must register for an account. When you register for an account, you may be required to provide us with some information about yourself (such as your e-mail address). You agree that the information you provide to us is accurate and that you will



keep it accurate and up-to-date at all times. When you register for a paid account, you will be asked to provide a password and a PIN. You are solely responsible for maintaining the confidentiality of your account, password and PIN, except with those who you authorize to use the Service. You agree to accept responsibility for all activities that occur under your account. If you have reason to believe that your account is no longer secure, then you must immediately notify us at "support [at] generationgenius.com." We do not permit sharing of any log-in information with anyone not covered by your purchased license (i.e, a school license log-in may not be shared with any other school; an individual license log-in may not be shared with any other individual). The school license covers all students and teachers in one building. Please contact us for pricing if your school is virtual.

5. **Payment.** Upon placing your order you will have full access to Generation Genius. Generation Genius will either charge the payment method you specify at the time of purchase, or invoice you for your order. You authorize Generation Genius to charge all sums described herein to such payment method. Payment of any invoice is due within 30 days after the date of the invoice. **All fees are in U.S. Dollars unless otherwise stated and are non-refundable.**
6. **Cancellation Policy.** Annual paid subscriptions can only be canceled and refunded within 30 days of opening a paid account or renewal date. Renewals for paid subscriptions can be turned off at any time in 1-click on the manage account page or by contacting us by phone or email. Canceling renewals stop all future renewals from being charged, however, previous charges before the date of cancellation will not be returned.
7. **Digital Millennium Copyright Act. DMCA Notification.** We comply with the provisions of the Digital Millennium Copyright Act applicable to internet service providers (17 U.S.C. §512, as amended). If you have any intellectual property complaints with respect to material posted on the Service, you may contact our Designated Agent at the following address: Generation Genius, Inc., 1679 South Dupont Highway, Ste 100, Dover, DE 19901 or at support [at] generationgenius.com. Any notice alleging that materials hosted by or distributed through the Service infringe intellectual property rights must include the following information:
  - an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed;
  - a description of the copyrighted work or other intellectual property that you claim has been infringed;
  - a description of the material that you claim is infringing and where it is located on the Service;
  - your address, telephone number, and email address;
  - a statement by you that you have a good faith belief that the use of the materials on the Service of which you are complaining is not authorized by the copyright owner, its agent, or the law; and
  - a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on the copyright or intellectual property owner's behalf.
8. **Prohibited Conduct.** BY USING THE SERVICE YOU AGREE NOT TO:



- Re-sell access to Generation Genius;
- Post any of our materials publically online;
- Use the Service for any illegal purpose, or in violation of any local, state, national, or international law;
- Violate, or encourage others to violate, the rights of third parties, including by infringing or misappropriating third-party intellectual property rights;
- Post, upload, or distribute any content that is unlawful, defamatory, libelous, inaccurate, or that a reasonable person could deem to be objectionable, profane, indecent, pornographic, harassing, threatening, embarrassing, hateful, or otherwise inappropriate;
- Interfere with security-related features of the Service, including without limitation by (i) disabling or circumventing features that prevent or limit use or copying of any content, or (ii) reverse engineering or otherwise attempting to discover the source code of the Service or any part thereof except to the extent that such activity is expressly permitted by applicable law;
- Interfere with the operation of the Service or any user's enjoyment of the Service, including without limitation by (i) uploading or otherwise disseminating viruses, adware, spyware, worms, or other malicious code, (ii) making unsolicited offers or advertisements to other users of the Service, (iii) attempting to collect, personal information about users or third parties without their consent; or (iv) interfering with or disrupting any networks, equipment, or servers connected to or used to provide the Service, or violating the regulations, policies, or procedures of such networks, equipment, or servers;
- Perform any fraudulent activity including impersonating any person or entity, claiming false affiliations, or accessing the Service accounts of others without Generation Genius's express permission;
- Sell or otherwise transfer the access granted herein or any Materials (see Section 10) or any right or ability to view, access, or use any Materials; or
- Attempt to do any of the foregoing in this Section 6, or assist or permit any persons in engaging in any of the activities described in this Section 6.

9. **Termination of Use; Discontinuation and Modification of the Service.** If you violate any provision of these Terms, your permission to use the Service will terminate automatically and Generation Genius will not be obligated to refund any fees you have paid. Additionally, Generation Genius, in its sole discretion may suspend your access to the Service at any time, with or without notice, if it suspects a violation of any provision of these terms. You may terminate your account at any time by contacting customer service at support [at] generationgenius.com.

10. **Privacy Policy; Additional Terms.**

- [Privacy Policy](#). Please read the Generation Genius Privacy Policy carefully for information relating to our collection, use, storage and disclosure of personal information collected through

use of the Service. The Generation Genius Privacy Policy is hereby incorporated by reference into, and made a part of, these Terms.

- Additional Terms. Your use of the Service is subject to any and all additional terms, policies, rules, or guidelines applicable to the Service or certain features of the Service that we may post on or link to on the Service (the "Additional Terms"), such as end-user license agreements for any downloadable applications that we may offer, or rules applicable to particular features or content on the Service, subject to Section 10. All such Additional Terms are hereby incorporated by reference into, and made a part of, these Terms.

11. **Modification of these Terms.** We reserve the right, at our discretion, to change these Terms on a going-forward basis at any time. Please check these Terms periodically for changes. In the event that a change to these Terms materially modifies your rights or obligations, you will be asked to accept such modified terms in order to continue to use the Service. Material modifications will be effective upon your acceptance of such modified Terms. Immaterial modifications are effective upon publication. For the avoidance of doubt, disputes arising under these Terms will be resolved in accordance with these Terms in effect at the time that either Generation Genius or you receive written notice of the dispute.
12. **Ownership; Proprietary Rights.** The Service is owned and operated by Generation Genius. The visual interfaces, graphics, design, compilation, information, data, computer code (including source code or object code), products, software, services, and all other elements of the Service (the "Materials") provided by Generation Genius are protected by all relevant intellectual property and proprietary rights and applicable laws. All Materials contained in the Service are the property of Generation Genius or our third-party licensors. Except as expressly authorized by Generation Genius, you may not make use of the Materials. Generation Genius reserves all rights to the Materials not granted expressly in these Terms.
13. **Indemnity.** You agree that you will be responsible for your use of the Service, and you agree to defend, indemnify, and hold harmless Generation Genius and its officers, directors, employees, consultants, affiliates, subsidiaries and agents (collectively, the "Generation Genius Entities") from and against any and all claims, liabilities, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with (i) your access to, use of, or alleged use of the Service; (ii) your violation of these Terms or any representation, warranty, or agreements referenced herein, or any applicable law or regulation; (iii) your violation of any third-party right, including without limitation any intellectual property right, publicity, confidentiality, property or privacy right; or (iv) any disputes or issues between you and any third party. We reserve the right, at our own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you (and without limiting your indemnification obligations with respect to such matter), and in such case, you agree to cooperate with our defense of such claim.
14. **Disclaimers; No Warranties.** THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS, WITHOUT WARRANTY OR CONDITION OF ANY KIND, EITHER EXPRESS OR IMPLIED. THE GENERATION GENIUS ENTITIES SPECIFICALLY (BUT WITHOUT LIMITATION) DISCLAIM ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED,

RELATING TO THE SERVICE AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE SERVICE, INCLUDING BUT NOT LIMITED TO (i) ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (ii) ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. THE GENERATION GENIUS ENTITIES DO NOT WARRANT THAT THE SERVICE OR ANY PART THEREOF, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE SERVICE, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND DO NOT WARRANT THAT ANY OF THE FOREGOING WILL BE CORRECTED.[break]NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM THE SERVICE OR ANY MATERIALS OR CONTENT AVAILABLE ON OR THROUGH THE SERVICE WILL CREATE ANY WARRANTY REGARDING ANY OF THE GENERATION GENIUS ENTITIES OR THE SERVICE THAT IS NOT EXPRESSLY STATED IN THESE TERMS. YOU ASSUME ALL RISK FOR ALL DAMAGES THAT MAY RESULT FROM YOUR USE OF OR ACCESS TO THE SERVICE, YOUR DEALINGS WITH OTHER SERVICE USERS, AND ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE. YOU UNDERSTAND AND AGREE THAT YOU USE THE SERVICE AND USE, ACCESS, DOWNLOAD, OR OTHERWISE OBTAIN MATERIALS OR CONTENT THROUGH THE SERVICE AND ANY ASSOCIATED SITES OR SERVICES AT YOUR OWN DISCRETION AND RISK, AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR PROPERTY (INCLUDING YOUR COMPUTER SYSTEM USED IN CONNECTION WITH THE SERVICE) OR LOSS OF DATA THAT RESULTS FROM THE USE OF THE SERVICE OR THE DOWNLOAD OR USE OF SUCH MATERIALS OR CONTENT. SOME JURISDICTIONS MAY PROHIBIT A DISCLAIMER OF WARRANTIES AND YOU MAY HAVE OTHER RIGHTS THAT VARY FROM JURISDICTION TO JURISDICTION.

15. **Limitation of Liability.** IN NO EVENT WILL THE GENERATION GENIUS ENTITIES BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA, OR OTHER INTANGIBLE LOSSES) ARISING OUT OF OR RELATING TO YOUR ACCESS TO OR USE OF, OR YOUR INABILITY TO ACCESS OR USE, THE SERVICE OR ANY MATERIALS OR CONTENT ON THE SERVICE, WHETHER BASED ON WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE OR ANY OTHER LEGAL THEORY, WHETHER OR NOT THE GENERATION GENIUS ENTITIES HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGE.[break]YOU AGREE THAT EXCEPT AS OTHERWISE SET FORTH IN SECTION 17.4(iii), THE AGGREGATE LIABILITY OF THE GENERATION GENIUS ENTITIES TO YOU FOR ANY AND ALL CLAIMS ARISING OUT OF RELATING TO THE USE OF OR ANY INABILITY TO USE THE SERVICE (INCLUDING ANY MATERIALS OR CONTENT AVAILABLE THROUGH THE SERVICE) OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO THE GREATER OF (i) THE AMOUNTS YOU HAVE PAID TO GENERATION GENIUS FOR ACCESS TO AND USE OF THE SERVICE IN THE 12 MONTHS PRIOR TO THE CLAIM OR (ii) \$100. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES. ACCORDINGLY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU. EACH PROVISION OF THESE TERMS THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES, OR EXCLUSION OF DAMAGES IS TO ALLOCATE THE RISKS



UNDER THESE TERMS BETWEEN THE PARTIES. THIS ALLOCATION IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THESE TERMS. THE LIMITATIONS IN THIS SECTION 14 WILL APPLY EVEN IF ANY LIMITED REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

16. **Governing Law.** These Terms shall be governed by the laws of the State of Delaware without regard to conflict of law principles. To the extent that any lawsuit or court proceeding is permitted under this Agreement, you and Generation Genius agree to submit to the personal and exclusive jurisdiction of the state courts and federal courts located within Dover, Delaware for the purpose of litigating all such disputes. We make no representation that Materials included in the Service are appropriate or available for use in other locations.
17. **General.** These Terms, together with the Privacy Policy, invoices issued by Generation Genius, any consent provided by you regarding Generation Genius's collection, use, or disclosure of personal information, and any other agreements expressly incorporated by reference herein, constitute the entire and exclusive understanding and agreement between you and Generation Genius regarding your use of and access to the Service, and except as expressly permitted above may be amended only by a written agreement signed by authorized representatives of all parties to these Terms. You may not assign or transfer these Terms or your rights under this Agreement, in whole or in part, by operation of law or otherwise, without our prior written consent. We may assign these Terms at any time without notice. The failure to require performance of any provision will not affect our right to require performance at any time thereafter, nor shall a waiver of any breach or default of these Terms or any provision of these Terms constitute a waiver of any subsequent breach or default or a waiver of the provision itself. Use of section headers in these Terms is for convenience only and shall not have any impact on the interpretation of particular provisions. In the event that any part of these Terms is held to be invalid or unenforceable, the unenforceable part shall be given effect to the greatest extent possible and the remaining parts will remain in full force and effect. Upon termination of these Terms, any provision that by its nature or express terms should survive will survive such termination or expiration, including, but not limited to, Sections 2, 4, and 8 through 19.
18. **Dispute Resolution and Arbitration.**
  - o Generally. In the interest of resolving disputes between you and Generation Genius in the most expedient and cost effective manner, you and Generation Genius agree that any and all disputes arising in connection with these Terms shall be resolved by binding confidential arbitration. Arbitration is more informal than a lawsuit in court. Arbitration uses a neutral arbitrator instead of a judge or jury, may allow for more limited discovery than in court, and can be subject to very limited review by courts. Arbitrators can award the same damages and relief that a court can award. Our agreement to arbitrate disputes includes but is not limited to all claims arising out of or relating to any aspect of these Terms, whether based in contract, tort, statute, fraud, misrepresentation or any other legal theory, and regardless of whether the claims arise during or after the termination of these Terms. YOU UNDERSTAND AND AGREE

THAT, BY ENTERING INTO THESE TERMS, YOU AND GENERATION GENIUS ARE EACH WAIVING THE RIGHT TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

- Exceptions. Notwithstanding Section 17.1, we both agree that nothing herein will be deemed to waive, preclude, or otherwise limit either of our right to: (i) bring an individual action in small claims court; (ii) pursue enforcement actions through applicable federal, state, or local agencies where such actions are available; (iii) seek injunctive relief or other provisional remedies in aid of arbitration from a court of law; or (iv) to file suit in a court of law to address intellectual property infringement claims.
- Arbitrator. Any arbitration between you and Generation Genius will be governed by the Commercial Dispute Resolution Procedures and the Supplementary Procedures for Consumer Related Disputes (collectively, "AAA Rules") of the American Arbitration Association ("AAA"), as modified by these Terms, and will be administered by the AAA. The AAA Rules and filing forms are available online at [www.adr.org](http://www.adr.org), by calling the AAA at 1-800-778-7879, or by contacting Generation Genius.
- Notice: Process. A party who intends to seek arbitration must first send a written notice of the dispute to the other, by certified mail or Federal Express (signature required), or in the event that we do not have a physical address on file for you, by electronic mail ("Notice"). Generation Genius's address for Notice is: 1679 South Dupont Highway, Ste 100, Dover, DE 19901. The Notice must (i) describe the nature and basis of the claim or dispute; and (ii) set forth the specific relief sought ("Demand"). We agree to use good faith efforts to resolve the claim directly, but if we do not reach an agreement to do so within 30 days after the Notice is received, you or Generation Genius may commence an arbitration proceeding. During the arbitration, the amount of any settlement offer made by you or Generation Genius shall not be disclosed to the arbitrator until after the arbitrator makes a final decision and award, if any. In the event our dispute is finally resolved through arbitration in your favor, Generation Genius shall pay you (i) the amount awarded by the arbitrator, if any, (ii) the last written settlement amount offered by Generation Genius in settlement of the dispute prior to the arbitrator's award; or (iii) \$1,000.00, whichever is greater.
- Fees. In the event that you commence arbitration in accordance with these Terms, Generation Genius will reimburse you for your payment of the filing fee, unless your claim is for greater than \$10,000, in which case the payment of any fees shall be decided by the AAA Rules. Any arbitration hearings will take place at a location to be agreed upon in New York County, New York, provided that if the claim is for \$10,000 or less, you may choose whether the arbitration will be conducted (i) solely on the basis of documents submitted to the arbitrator; (ii) through a non-appearance based telephonic hearing; or (iii) by an in-person hearing as established by the AAA Rules in the county (or parish) of your billing address. If the arbitrator finds that either the substance of your claim or the relief sought in the Demand is frivolous or brought for an

improper purpose (as measured by the standards set forth in Federal Rule of Civil Procedure 11(b)), then the payment of all fees will be governed by the AAA Rules. In such case, you agree to reimburse Generation Genius for all monies previously disbursed by it that are otherwise your obligation to pay under the AAA Rules. Regardless of the manner in which the arbitration is conducted, the arbitrator shall issue a reasoned written decision sufficient to explain the essential findings and conclusions on which the decision and award, if any, are based. The arbitrator may make rulings and resolve disputes as to the payment and reimbursement of fees or expenses at any time during the proceeding and upon request from either party made within 14 days of the arbitrator's ruling on the merits.

- No Class Actions. YOU AND GENERATION GENIUS AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. Further, unless both you and Generation Genius agree otherwise, the arbitrator may not consolidate more than one person's claims, and may not otherwise preside over any form of a representative or class proceeding.
- Modifications. In the event that Generation Genius makes any future change to this arbitration provision (other than a change to Generation Genius's address for Notice), you may reject any such change by sending us written notice within 30 days of the change to Generation Genius's address for Notice, in which case this arbitration provision, as in effect immediately prior to the amendments you reject shall survive.
- Enforceability. If Section 17.6 is found to be unenforceable or if the entirety of this Section 17 is found to be unenforceable, then the entirety of this Section 17 shall be null and void and, in such case, the parties agree that the exclusive jurisdiction and venue described in Section 15 shall govern any action arising out of or related to these Terms.

19. **Consent to Electronic Communications.** By using the Service, you consent to receiving certain electronic communications from us as further described in our Privacy Policy. Please read our Privacy Policy to learn more about your choices regarding our electronic communications practices. You agree that any notices, agreements, disclosures, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.
20. **Contact Information.** The Service is offered by Generation Genius, Inc., located at 1679 South Dupont Highway, Ste 100, Dover, DE 19901. You may contact us by sending correspondence to the foregoing address or by emailing us at support [at] generationgenius.com. If you are a California resident, you may have these Terms mailed to you electronically by sending a letter to the foregoing address with your electronic mail address and a request for these Terms.