



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

Issue Paper

DATE:

May 9, 2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve Fort Wright is seeking approval to pilot a subscription to Simple Solutions for the 2023-24 school year.

APPLICABLE BOARD POLICY:

01.1 – Legal Status of the Board

HISTORY/BACKGROUND:

Fort Wright is seeking approval to pilot a subscription to Simple Solutions Social Studies to be used in fifth grade. This curriculum will be used for daily spiral reviews, needs based instruction, and ESS. This instructional resource was approved by the KCS D.

FISCAL/BUDGETARY IMPACT:

\$0

RECOMMENDATION:

Approval to Fort Wright is seeking approval to pilot a subscription to Simple Solutions for the 2023-24 school year.

CONTACT PERSON:

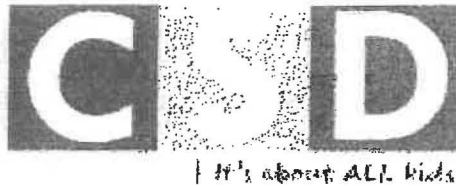
Tina Wartman, Principal


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.



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

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

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

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

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

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

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

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

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

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

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

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

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

Student Data Security

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

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes. • Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

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

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

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

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

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

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Simple Solutions Learning, Inc.

Vendor Name

24755 Highpoint Road, Beachwood, Ohio 44122

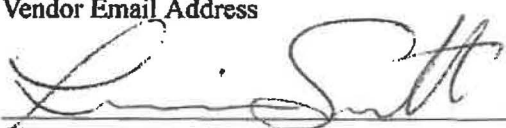
Vendor Address

1-877-382-7537

Vendor Telephone

lorraine@simplesolutions.org

Vendor Email Address


Signature by Vendor's Authorized Representative

Lorraine Scott, Controller

Print Name

05/08/2023

Date

AMENDMENT TO TERMS OF USE

This Amendment to Terms of Use ("Amendment") is entered into by Simple Solutions Learning, Inc. ("Simple Solutions") of 24755 Highpoint Road, Beachwood, Ohio 44122, and the Kenton County School District ("District") of 1055 Eaton Drive, Fort Wright, Kentucky 41017. This Amendment modifies the Simple Solutions Terms of Use found at <https://simplesolutions.org/terms-of-use/> ("Agreement") pursuant to which District has or will order certain educational materials and other fee-based Content. All capitalized terms used in this Amendment, not otherwise defined and not conventionally capitalized, shall have the meanings ascribed to them in the Agreement. Simple Solutions and District, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, agree to amend the Agreement as specified below, effective as of May 25, 2023.

1. In addition to the termination rights set forth in the Agreement, either party may terminate the Agreement at any time upon written notice to the other party. Upon such termination, District shall immediately discontinue all use of the Services.
2. The Agreement currently does not provide for late payment fees. However, if Simple Solutions modifies the Agreement, as permitted in the Agreement, to provide for late fees, District shall have no obligation to pay such late fees.
3. Notwithstanding the provisions in Section 15, Dispute Resolution, of the Agreement, any mediation or arbitration initiated under such provisions shall take place in the northern Kentucky metropolitan area.
4. Notwithstanding the provisions of Section 16, Miscellaneous, of the Agreement, the Agreement and any claim arising out of the Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, excluding its conflict of laws principles.
5. This Amendment may not be amended except by a writing that specifically references this Amendment and is signed by an authorized representative of each party.
6. All other terms of the Agreement remain in effect as they are.

Kenton County School District

By: _____
(Signature)

(Name Typed or Printed)

(Title)

(Date)

Simple Solutions, Learning, Inc.

By: _____
(Signature)

Jordan Klineh

(Name Typed or Printed)

President

(Title)

5/18/2023

(Date)

Terms of Use

Simple Solutions Terms of Use

(Last Updated: September 30, 2022)

1. Introduction

Simple Solutions Learning, Inc. ("we" or "us" or "our") provides our website services and our educational materials, (collectively, "Services") to the user ("you" or "your") pursuant to the terms and conditions of this Terms of Use ("Agreement"). The Services are accessible through one or more of our websites ("Website"). By using the Services, you are accepting this Agreement. We may change this Agreement from time to time without notice to you. In addition, when using particular Services, you will be subject to any posted policies, guidelines, or rules applicable to such Services that may be posted from time to time, including the Simple Solutions Privacy Policy ("Privacy Policy"). All such policies, guidelines, and rules are hereby incorporated by reference into this Agreement. The collection and use of personal information is governed by this Agreement and the Privacy Policy. Please review the Privacy Policy posted on the Website.

The Website is owned and operated by us and contains material that is derived in whole or in part from us and other sources and is protected by international copyright, trademark, and other intellectual property laws. You may not modify, copy, reproduce, republish, upload, post, transmit or distribute in any way any material from the Website, including our educational materials, except as permitted by this Agreement or otherwise consented to by us in writing. You may download material from the Website for your personal, non-commercial use, or your employer-entity's internal use only, provided you keep intact all copyright, trademark, and other proprietary notices and, if applicable, maintain attribution to the author. No right or license, other than as set forth in this Agreement, is granted to any materials on or available through the Website. Downloading certain materials requires the payment of the applicable fees.

The Website and the Services may only be used by you for lawful purposes. Transmission, distribution, or storage of Content (as defined in Section 2 below) or other material in violation of any applicable local, state, federal, foreign, or international laws, rules, or regulations is prohibited. You understand that the technical processing and transmission of the Services, including your Content, may involve (a) transmissions over various networks, and (b) changes to conform and adapt to technical requirements of connecting networks or devices.

2. User Conduct

You understand that all information, advertising, data, text, articles, software, music, sound, photographs, graphics, video, messages, postings, or other materials ("Content"), whether publicly posted or privately transmitted, are the sole responsibility of the person from whom such Content originated. This means that you, and not us, are entirely responsible for all Content that you upload, post, email, or otherwise transmit via the Services, and that you must evaluate, and bear all risks associated with, the use of any Content posted or transmitted by you or other users (e.g., posts to our Blog site). We do not control the Content posted by users via the Services and, as such, do not guarantee the usefulness, accuracy, integrity, or quality of such Content. Under no circumstances will we be liable in any way for any Content, including, but not limited to, any errors or omissions in any Content, or any loss or damage of any kind incurred as a result of the use of any Content posted, emailed, or otherwise transmitted, whether by us, you, or others.



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obscene, libelous, invasive of another's privacy, hateful, or racially, ethnically, or otherwise objectionable; (b) harm minors in any way; (c) impersonate any person or entity, or falsely state or otherwise misrepresent your affiliation with any person or entity; (d) post any incomplete, false, or inaccurate biographical information; (e) forge headers or otherwise manipulate identifiers in order to disguise the origin of any Content transmitted through the Services; (f) upload, post, email, or otherwise transmit any Content that you do not have a right to transmit under any law or under contractual or fiduciary relationships (such as inside information, proprietary and confidential information learned or disclosed as part of employment relationships or under nondisclosure agreements); (g) upload, post, email, or otherwise transmit any Content that infringes any patent, trademark, trade secret, copyright, or other proprietary right of any party; (h) upload, post, email, or otherwise transmit any unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, or any other similar solicitations; (i) upload, post, email, or otherwise transmit any material that contains software viruses or any other computer code, files, or programs designed to interrupt, destroy, or limit the functionality of any computer software or hardware or telecommunications equipment; (j) disrupt the normal flow of dialogue, cause a screen to scroll faster than other users of the Services are able to type, or otherwise act in a manner that negatively affects other users' ability to engage in real time exchanges; (k) interfere with or disrupt the Services or servers or networks connected to the Website, or disobey any requirements, procedures, policies, or regulations of networks connected to the Website; (l) intentionally or unintentionally violate any applicable local, state, federal, foreign, or international laws, rules, and regulations; (m) stalk or otherwise harass another; or (n) collect, store, or use personal data about other users of the Services, except as may be necessary to complete a transaction offered or accepted by such users.

When retrieving information from the Website, you are prohibited from (a) using or attempting to use spiders, crawlers, robots, avatars, intelligent agents, or any other extraction or navigation search except for a normal browser; (b) aggregating, copying, or duplicating any of the materials or information except for the small amount of materials and information temporarily required for an ordinary single use of the Website; and (c) accessing data not intended for you.

Recognizing the global nature of the Internet, you acknowledge that what may legally be done on or through the Internet in the jurisdiction of your residence may not be permissible in every jurisdiction in the world. Therefore, you specifically agree to comply with all local laws, rules, and regulations of the jurisdiction of the recipient regarding online conduct and acceptable Content. In addition, you agree to comply with all applicable laws, rules, and regulations regarding the transmission of technical data exported from the United States and the country in which you reside. The foregoing obligation shall survive termination of this Agreement.

3. Purchase Terms

If you purchase any of our educational materials or other fee-based Content, the provisions of this Section 3, in addition to the rest of this Agreement, apply to you.

Note that with the purchase of any class set of materials, the class teacher receives free access to the Simple Solutions Tools and Resource Center (STaR Center) for the then-current school year at no additional charge.

In order to purchase materials through the Website, you must complete the registration process and create a password-protected account with us that will include your billing and payment information. You are solely responsible for all activity on your account and for the security of your computer system. You may not reveal, share, or otherwise allow others to use your user name or password or access your account. If you determine that another party has gained access to your user name and password, or that another has wrongfully accessed your account using your user name and password, you will promptly notify us and we will issue a new user name and password to you and will delete the old user name and password. If we determine that, as a result of your improper disclosure of your user name and password, another user has accessed the purchased materials, we may immediately cancel your access and will have no obligation to refund any fees that you have paid. You may access and use the purchased materials for your own personal, non-commercial use only. You may not provide



All fees must be paid in advance in U.S. dollars and are non-refundable, unless otherwise specified.

When you provide credit card information to us, you represent to us that you are the authorized user of the credit card and that you authorize us or our third-party payment processor or to charge your credit card for the price of the materials you order through the Website or otherwise. You agree to notify us promptly of any changes to your credit card account number, its expiration date, and/or your billing address. You agree to notify us promptly if your credit card expires or is canceled for any reason.

We reserve the right to change our fees or billing methods at any time. We will provide notice of any such change at least 30 days in advance. All changes will be posted as amendments to this Agreement, and you are responsible for reviewing this Agreement periodically to obtain timely notice of such changes. If any change is unacceptable to you, you may cancel your account, but we will not refund any credits that may have accrued to your account before cancellation of your account. If you do not cancel your account within 30 days after our posting of the changes, you are deemed to accept such changes. You may cancel your account by contacting us via email at info@simplesolutions.org.

The prices for materials are subject to change at any time without notice. Charges for shipping, handling, and taxes may not be included in displayed prices, but will be displayed during the purchase process. You must pay all applicable sales and use taxes, value added taxes, and other taxes levied by any applicable taxing authority on any purchase, regardless of the method of delivery.

4. Returns and Exchanges

You may return or exchange new, unmarked materials within 30 days of the shipping date. Materials that are not in original condition are not eligible for a refund or exchange. In some cases, a restocking fee of 10% will also be charged. Note: Some materials are printed in semester sets. Each two-volume set constitutes one item. We do not sell individual volumes of multi-volume sets separately, nor do we accept individual volumes of multi-volume sets for refund or exchange. Whenever possible, books should be returned in their original packaging. For a proper return without exchange, we will refund the purchase price, but not shipping and handling fees. For exchanges, you are responsible for shipping and handling fees for returning the materials as well as the shipment of the replacement materials. However, if the return or exchange is a result of our error or damage that occurred during shipping, we will refund or pay, as applicable, the shipping and handling fees. To initiate a return or exchange, please call (877) 382-7537 to speak with one of our consultants.

5. No Right to Make Copies of Materials or Post to Social Media

No part of our educational materials may be reproduced, distributed, transmitted, posted to social media, or otherwise copied in any form or by any means (mechanically, electronically, recording, etc.) for any purpose without our prior written consent. To use any of our materials for purposes other than as permitted in this Agreement, you must obtain our prior written consent. Our consent will be granted on a case-by-case basis at our sole discretion. To request such consent, contact us at: Simple Solutions Learning, Inc., Copyright Permissions, 24755 Highpoint Road, Beachwood, Ohio 44122, United States of America or at info@simplesolutions.org.

Upon your written request and at our sole discretion, we may provide our educational materials to you in PDF format for the sole purpose of enabling you to make the applicable materials accessible to individuals who are visually impaired or who otherwise require learning accommodations. You may not copy or use and may not allow any other party to copy or use a PDF version of the materials for any other purpose.

6. Simple Solution's Proprietary Rights

You acknowledge and agree that the Services, including our educational materials, and any necessary software used in connection with the Services contain proprietary and confidential information that is protected by applicable intellectual property laws and other laws. You further acknowledge and agree that Content, as well as any other information presented to you

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authorized in writing by us or the applicable retail partners, advertisers, Content authors, or other users, you agree not to reprint, reproduce, distribute or otherwise transfer, modify, or create derivative works based on the Services or the Content, in whole or in part. You agree not to access the Services by any means other than through the interface that is provided by us for use in accessing the Services.

7. Simple Solution's Rights to Content

With respect to Content you post for inclusion in publicly accessible areas of the Website, you grant us the worldwide, royalty-free, and non-exclusive license to reproduce, modify, adapt, and publish such Content in connection with the Services solely for the purpose of displaying and distributing the Content for the purpose for which such Content was submitted to us. This license exists only for as long as you elect to continue to include such Content on the Services and will be terminated 30 days after you delete or give us written notice to delete such Content from the Services.

You acknowledge that we may, but do not have the obligation to pre-screen Content. We have the right, in our sole discretion, to refuse or remove any Content that is available through the Services. Without limiting the foregoing, we have the right to remove any Content that we, in our sole discretion, deem violates this Agreement or is otherwise objectionable. In addition, we may pursue any of our other legal remedies, including, but not limited to, the immediate cancellation of your account, the exclusion from the Website of you and anyone else who may have violated this Agreement, and pursuing violators under various criminal and/or civil laws under the relevant jurisdiction. We will cooperate with any investigation by any federal, state, or local body or any court or tribunal legitimately exercising its rights. Such cooperation may be without notice to you. You acknowledge and agree that we may preserve Content and user information and may disclose Content and user information in accordance with the Privacy Policy, if required to do so by law, or in the good-faith belief that such preservation or disclosure is reasonably necessary to: (a) comply with legal process; (b) enforce this Agreement; (c) respond to claims that any Content violates the rights of third parties; (d) protect the rights, property, or personal safety of us, users of the Services, or the public; or (e) minimize or eliminate our potential liability.

We encourage you to provide us with information about your experience using the Services, which will enable us to improve the Services. This includes any ideas or suggestions pertaining to new products, services, and other items. You give us the unencumbered right to use such ideas or suggestions. We will not provide any compensation for the ideas or suggestions, but they may make the Website or the Services better or more useful for you and other users.

8. Digital Millennium Copyright Act ("DMCA") Notice

Content may be made available via the Website by third parties not within our control. We are under no obligation to, and do not, scan such Content for the inclusion of illegal or impermissible content. However, we respect the intellectual property of others, and we require that you and all of our other users to do the same. It is our policy not to permit materials known by us to infringe another party's copyright to remain on the Website.

If you believe any materials on the Website infringe a copyright, you should provide us with written notice that at a minimum contains: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works at that site; (c) identification of the material that is claimed to be infringing or to be the subject of infringing activity that is to be removed or access to which is to be disabled, and information reasonably sufficient to permit us to locate the material; (d) information reasonably sufficient to permit us to contact the complaining party, such as an address, telephone number, and, if available, an email address at which the complaining party may be contacted; (e) a statement that the complaining party has a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and (f) a statement that the information in the notification is accurate, and, under penalty of perjury, that the complaining party is authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

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Solutions Learning, Inc., via postal mail at 24755 Highpoint Road, Beachwood, Ohio 44122, United States of America or via email at Info@simplesolutions.org.

9. Indemnity

You agree to indemnify and hold us, and our subsidiaries, affiliates, owners, directors, officers, managers, agents, and employees, harmless from all damages and expenses, including court costs and reasonable attorney fees, arising out of any claim based on Content you submit, post, transmit, or use through the Services, your use of the Services or Content, your connection to the Website, your violation of this Agreement, and your violation of any rights of another or of any law, rule, or regulation.

10. No Resale of Services

You agree not to reproduce, duplicate, copy, sell, resell or exploit for any commercial purposes, any portion of the Services and/or Content, use of the Services and/or Content, or access to the Services and/or Content, without our express written consent and the Content author.

11. Modification and Termination

You acknowledge that we may establish general practices and limits concerning use of the Services. You agree that we have no responsibility or liability for the deletion or failure to store any messages and other communications or other Content maintained or transmitted by the Services. You further acknowledge that we reserve the right to change these general practices and limits at any time, in our sole discretion, with or without notice, including, without limitation, adding or deleting fees associated with the Services. If any charge is applicable to any Services, we will notify you in advance.

We reserve the right at any time and from time to time to modify or discontinue, temporarily or permanently, the Services, in whole or in part, with or without notice. You agree that we will not be liable to you or to any third party for any modification, suspension, or discontinuance of the Services or removal of Content.

You agree that we, in our sole discretion, may terminate your use of the Services, in whole or in part, and remove and discard any Content, for any reason without notice. Further, you agree that we are not liable to you or any third party for any termination of your access to the Services and discarding any Content.

12. Dealings with Retail Partners, Advertisers, and Other Users

Your correspondence or business dealings with retail partners, advertisers, and other users found on or through the Services, including payment and delivery of products or services, and any other terms, conditions, warranties, or representations associated with such dealings, are solely between you and such retail partner, advertiser, or user. You agree that we are not responsible or liable for any loss or damage of any sort incurred as the result of any such dealings or as the result of the presence of such retail partners, advertisers, or users in connection with the Services. If there is a dispute with retail partners, advertisers, or other users of the Services, we are under no obligation to become involved.

13. Links

The Services may provide, or third parties may provide, links to other websites or resources. Because we have no control over such sites and resources, you agree that we are not responsible for the availability of such sites or resources, and does not endorse and is not responsible or liable for any Content, advertising, products, services, or other materials on or available from such sites or resources. You further acknowledge and agree that we are not responsible or liable, directly or indirectly, for any damage or loss caused or alleged to be caused by or in connection with use of or reliance on any such Content or products or services available on or through any such sites or resources.

14. Disclaimer of Warranties and Limitations of Liability

YOU EXPRESSLY UNDERSTAND AND AGREE THAT: (a) YOUR USE OF THE SERVICES AND CONTENT IS AT YOUR SOLE RISK. THE SERVICES AND CONTENT ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. WE EXPRESSLY DISCLAIM ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF ACCURACY OF DATA,

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FROM USAGE OF TRADE; (b) WE MAKE NO WARRANTY (i) THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR FREE, (ii) THAT THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICES OR CONTENT WILL BE ACCURATE OR RELIABLE, (iii) THAT THE QUALITY OF ANY CONTENT, PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICES WILL MEET YOUR EXPECTATIONS, OR (iv) THAT ANY ERRORS IN THE SERVICES WILL BE CORRECTED; (c) ANY CONTENT OR OTHER MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICES IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU ARE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA OR OTHER LOSS THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL; AND (d) NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US OR THROUGH OR FROM THE SERVICES OR CONTENT WILL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

YOU EXPRESSLY UNDERSTAND AND AGREE THAT WE ARE NOT LIABLE FOR ANY DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES) RESULTING FROM: (a) THE ACCESS OR USE OR THE INABILITY TO ACCESS OR USE THE SERVICES OR CONTENT; (b) THE COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS AND SERVICES RESULTING FROM ANY PRODUCTS, DATA, INFORMATION, OR SERVICES PURCHASED OR OBTAINED OR CONTENT USED OR MESSAGES RECEIVED OR TRANSACTIONS ENTERED THROUGH OR FROM THE SERVICES; (c) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR TRANSMISSIONS OR DATA; (d) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SERVICES; (e) ANY INTERRUPTION, SUSPENSION, OR TERMINATION OF THE SERVICES, OR (f) ANY OTHER MATTER RELATING TO THE SERVICES, THE CONTENT, OR THE WEBSITE, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE LIMITATIONS OF THIS SECTION MAY NOT APPLY TO YOU.

15. Dispute Resolution

Any claim or controversy arising out of or relating to this Agreement that is not resolved by you and US directly will be SETTLED by mediation and, if mediation is unsuccessful, by binding arbitration. The mediation and arbitration will take place in the CLEVELAND, OHIO metropolitan area, and will be administered in accordance with the American Arbitration Association Commercial Arbitration Rules, including the Optional Rules for Emergency Measures of Protection, by mediator(s) and arbitrator(s) mutually selected by you and US in accordance with such rules.

16. Miscellaneous

You may not assign or otherwise transfer this Agreement or any rights or obligations under this Agreement to any third party without our prior written consent. The failure of either party to act upon any right, remedy, or breach of this Agreement will not constitute a waiver of that or any other right, remedy, or breach. No waiver will be effective unless made in writing and signed by the waiving party. Neither party will be liable for any delay in or failure of performance resulting from any cause or condition beyond the party's reasonable control, whether foreseeable or not, including vandalism that disrupts or corrupts the Website or the Services. The provisions of this Agreement are severable. If any provision is held to be invalid, unenforceable, or void, the remaining provisions will not as a result be invalidated. This Agreement and any claim arising out of this Agreement will be governed by and construed in accordance with the laws of the State of Ohio, excluding its conflict of laws principles. This Agreement constitutes the entire agreement and understanding between the parties relating to the object and scope of this Agreement. Any representation, statement or warranty not expressly contained in this Agreement, will not be enforceable by the parties.



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